

December 2, 2004

TODD MYERS
DOUG SUTHERLAND CAMPAIGN
210 UNION AVE SE #H
OLYMPIA WA 98501

Subject: PDC Case No. 05-008 -- Complaint filed against: (1) Peter Goldman; (2) Washington State Democratic Central Committee, Paul Berendt, Chairman; and (3) Mike Cooper for Commissioner of Public Lands campaign.

Dear Mr. Myers:

The Public Disclosure Commission staff has completed its investigation of your complaint received on July 26, 2004, alleging that Peter Goldman, the Washington State Democratic Central Committee, Paul Berendt Chairman, and the Mike Cooper for Commissioner of Public Lands campaign have violated RCW 42.17 as follows:

- 1) RCW 42.17.640(1) by Peter Goldman by making earmarked contributions through the Washington State Democratic Central Committee for the Mike Cooper campaign in excess of contribution limits;
- 2) RCW 42.17.135 by the Washington State Democratic Central Committee (hereafter, WSDCC), Paul Berendt Chairman, by failing to properly report the receipt of earmarked contributions from Mr. Goldman intended for the Mike Cooper for Commissioner of Public Lands campaign (hereafter, the Cooper campaign); and
- 3) RCW 42.17.640(13) by the Cooper campaign by accepting contributions from Mr. Goldman earmarked through the WSDCC, in excess of contribution limits.

Additionally, on September 20, 2004, you submitted a letter and newspaper article to supplement your July 26th complaint and alleged that Mr. Goldman's September 15, 2004 contribution of \$250,000 to Citizens Protecting our Water and Forests further illustrates your original allegations.

The PDC staff reviewed your allegations in light of the following statutes and administrative rules: RCW 42.17.135; 42.17.640(1); 42.17.640(13); 42.17.670; and WAC 390-16-240. The statutory and rule references are enclosed.

Exceeding contribution limits (RCW 42.17. 640(1)) and Failing to Report Earmarked Contributions (RCW 42.17.135):

You alleged that public statements made by Mr. Goldman and his spouse, Martha Kongsgaard, along with the timing and size of three contributions from Mr. Goldman to

the WSDCC, totaling \$34,000¹, and three subsequent contributions from the WSDCC to Mike Cooper's campaign totaling \$40,000², provide ***"evidence of illegal earmarking,"*** which exceed primary election contribution limits by \$34,000 from Mr. Goldman. You also alleged that the earmarked contributions were not properly reported by the WSDCC as required by RCW 42.17.135.

We found that:

- Your complaint included two articles from the Seattle Times, published on December 6, 2003, and July 25, 2004 concerning the emergence of "527 groups," which are tax-exempt organizations that engage in political activities and that are registered with the Internal Revenue Service under section 527 of the Internal Revenue Code. The articles include statements made by Ms. Kongsgaard and Mr. Goldman. Under oath, Mr. Goldman stated that statements made to the Seattle Times by his spouse reflected their intent to support 527 groups during federal elections, and that his comments also pertained to federal election politics and the Democratic National Committee, and did not pertain to state party politics or elections.
- Mr. Goldman stated that on March 29, 2004 he met with Paul Berendt and told him that he was supporting Mike Cooper's candidacy for Public Lands Commissioner. Mr. Goldman stated that he asked Mr. Berendt ***"to make that race a priority along with all of the other races."*** However, Mr. Goldman denied that there was ever any agreement with the Party, implied or expressed, that his money was conditioned, or was expected to be used to support Mike Cooper's candidacy for Public Lands Commissioner.
- Mr. Berendt stated under oath that Mr. Goldman did not state, suggest or imply that he would make contributions to the Party only if the WSDCC would support the environment or a particular candidate. Mr. Berendt stated that the Party allocated funds based on budgeting decisions made by the WSDCC's executive board earlier in the calendar year, which was determined by the Party's platform, and the strength of its candidates. Specific to the Cooper campaign, Mr. Berendt stated that the WSDCC budgeted \$10,000 monthly through the primary election, and did not base that amount on contributions made by Mr. Goldman. The WSDCC contributed \$10,000 to the Cooper campaign on April 30, 2004, \$10,000 on May 26, 2004, and \$20,000 for June and July on July 7, 2004.
- As previously described, both Mr. Goldman and Mr. Berendt stated under oath that Mr. Goldman did not suggest or imply that the Party should use his contributions to support any particular candidate or issue.

Mr. Goldman and Mr. Berendt both stated that there was no agreement, implied or expressed, that Mr. Goldman's contributions were to be used to support the Cooper Campaign. In addition, the timing of the contributions made by Mr. Goldman to the WSDCC, and contributions made by the WDC to the Cooper Campaign appear to be

¹ Mr. Goldman made contributions of \$20,000, \$4,000, and \$10,000, to the WSDCC non-exempt account received on April 13, June 22, and July 6, 2004, respectively.

² The WSDCC non-exempt account made contributions of \$10,000, \$10,000, and \$20,000, to the Cooper campaign received on April 30, May 26, and July 7, 2004, respectively.

coincidental based on testimony from Mr. Berendt concerning the amount budgeted by the WSDCC executive board and when contributions were to be distributed to the Cooper Campaign. Further, the statements made by Mr. Goldman and Ms. Kongsgaard published in the Seattle Times reference the federal election and appear to be taken out of context in their application to state party politics. Thus, there is no evidence that Mr. Goldman earmarked contributions through the WSDCC to the Cooper Campaign.

Although Mr. Goldman made contributions to the WSDCC non-exempt account, there is no evidence of an agreement between Mr. Berendt and Mr. Goldman that WSDCC would support a particular candidate or issue conditioned on Mr. Goldman making contributions. Because there were no earmarked contributions, there were no statutory reporting obligations associated with earmarking.

Exceeding Primary Election Contribution Limits, RCW 42.17.640(13):

You alleged that the Cooper campaign violated RCW 42.17.640 by accepting primary election campaign contributions in excess of \$1,350, and that Mr. Goldman violated RCW 42.17.640 by making contributions that exceeded allowable limits based on your belief that WSDCC received contributions earmarked by Mr. Goldman for the Cooper Campaign. As discussed above, this allegation is not supported by the facts, and there is no evidence that the Cooper Campaign accepted contributions in excess of the allowable limits, or that Peter Goldman made contributions in excess of allowable limits.

Further, Mike Cooper, Edie Gilliss (the Cooper Campaign manager) and Jim Kainber, the Cooper Campaign consultant, all state that they were not aware of Mr. Goldman's contribution activity with respect to his donations to the Washington State Democratic Central Committee.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Peter Goldman, the Washington State Democratic Central Committee, and its chairman Paul Berendt, and the Cooper Campaign.

Sincerely,

Vicki Rippie
Executive Director
Enclosure

c: Peter Goldman
Washington State Democratic Central Committee, Chairman Paul Berendt
Mike Cooper for Commissioner of Public Lands campaign

Statutes and Administrative Rules

RCW 42.17.135 requires that a political committee receiving a contribution earmarked for the benefit of another candidate or political committee to report the contribution as required.

RCW 42.17.640(1) sets contribution limits for state office candidates and sets standards for acceptance of contributions for the primary and general elections. The limit for the 2004 primary election for a Statewide Executive candidate is \$1,350³.

RCW 42.17.670 states that all contributions made by a person or entity, either directly or indirectly, to a candidate... are considered to be contributions from that person or entity to the candidate... as are contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate.

RCW 42.17.730 states that a person, other than an individual, may not be an intermediary or an agent for a contribution. In addition, an individual may not make a contribution on behalf of another person or entity, or while acting as the intermediary or agent of another person or entity, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer, if any, or place of business if self-employed, and the same information for each contributor for whom the individual serves as intermediary or agent.

WAC 390-16-240 defines earmarked contributions...means any contribution given to an intermediary or conduit, either a political committee, candidate or third party, with a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which is intended to result in or which does result in all or any part of the contribution being made to or for the promotion of a certain candidate, state official, or ballot proposition.

³ Adjusted for inflation from \$1,250 by amending WAC 390-05-400, effective January 1, 2004.